IN THE COURT OF APPEALS OF THE STATE OF ALASKA

GREGORY DEAN CURTIS, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12042 Trial Court No. 4FA-13-1477 CR MEMORANDUM OPINION No. 6404 — December 14, 2016

Appeal from the Superior Court, Fourth Judicial District, Fairbanks, Douglas Blankenship, Judge.

Appearances: J. Adam Bartlett, Attorney at Law, Anchorage, for the Appellant. Eric A. Ringsmuth, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

Judge ALLARD.

Gregory Dean Curtis challenges his conviction for felony refusal to submit to a chemical test,[1] arguing that the superior court erred in denying his motion to

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

[1] AS 28.35.032(a), (p).

suppress evidence seized as a result of an allegedly illegal stop of his vehicle. For the reasons explained here, we agree with the superior court that the stop was justified by reasonable suspicion and that the evidence was therefore seized lawfully.

Relevant factual background

At approximately 2 a.m. on June 3, 2013, the Fairbanks police dispatch received a 911 call from Bette Baker reporting that her boyfriend, Gregory Curtis, was intoxicated and attempting to break into her cabin with an axe. The cabin was on Willow Creek Road, in a remote area off the Elliot Highway north of Fairbanks.

Dispatch notified the local troopers and also informed them that Curtis had an active warrant for his arrest. Trooper Meyer and Trooper Hayes, in separate cruisers, responded immediately. The troopers converged somewhere on the Steese Highway and then drove their separate vehicles toward Baker's cabin, traveling at over 100 mph.

Baker called 911 a second time to report that an intoxicated Curtis had left the scene driving a truck. The dispatcher relayed this information to the troopers, and told them to "[u]se extreme caution" because Curtis was "red-flagged as [an] assaultive subject" based on his prior threats to law enforcement.

While en route to the cabin, the troopers stopped two vehicles — a truck and an SUV — to ensure that Curtis was not in them. The troopers also stopped to investigate a truck parked on the side of the highway, but departed after determining that it was abandoned. These stops took between ten and fifteen seconds apiece.

The troopers turned onto Haystack Mountain Road in the direction of Baker's cabin. At 2:33 a.m. — thirty minutes after Baker's initial 911 call — the troopers passed a red pickup truck occupied by a single white male driving in the opposite direction, and they attempted to initiate a stop. The driver of the vehicle

continued for approximately one mile, then pulled over approximately 1/4 mile from the intersection of Haystack Mountain Road and the Elliot Highway.

The troopers exited their vehicles and approached the truck with guns drawn. The driver, whom they recognized as Curtis, stumbled out of the vehicle. Trooper Meyer noticed an odor of alcohol and observed that Curtis had "delayed responses," was swaying, and had bloodshot, watery eyes. The troopers also observed beer cans in the truck, both opened and unopened.

While Trooper Meyer took Curtis into custody on suspicion of DUI, Trooper Hayes drove the remaining four to five miles to Baker's cabin. When he arrived, he saw evidence of a failed break-in, including significant damage to the cabin door. The trooper observed indentations in the door, and he noticed a two-by-four matching the shape of the indentations lying on the ground nearby. After determining that Baker was not inside, Trooper Hayes followed a set of footprints in the snow to a second nearby cabin, where he found Baker hiding.

Trooper Meyer transported Curtis to the police station, where he refused a breath test. The State subsequently charged Curtis with felony DUI, felony refusal of a breath test, driving while license revoked, third-degree assault, fourth-degree assault, third-degree criminal mischief, and fourth-degree criminal mischief.[2]

Prior to trial, Curtis moved to suppress the evidence arising from the stop, arguing that the stop was not supported by reasonable suspicion. Curtis argued that the officers lacked reasonable suspicion because Baker called dispatch to say that she was "okay" prior to the stop — meaning that there was no longer an "imminent public

[2] AS 28.35.030(a)(1), (n); AS 28.35.032(a), (p); AS 28.15.291(a)(1); AS 11.41.-220(a)(1)(A); AS 11.41.230(a)(1); AS 11.46.482(a)(1); AS 11.46.484(a)(1).

danger." He also argued that there was no reasonable suspicion for any of the stops because dispatch did not provide the troopers with specific information about the truck.

Superior Court Judge Douglas Blankenship held an evidentiary hearing on the motion to suppress. At the hearing, the troopers testified about the information they received from dispatch, although there was some confusion over whether the troopers were told prior to the stop that Curtis's truck was red. The troopers testified that they stopped the various vehicles based on the seriousness of the alleged conduct and based on the fact that every vehicle they encountered was either a truck or an SUV. (One of the troopers testified that they stopped the SUV because people often refer to trucks and SUVs indiscriminately, and he was concerned that the caller may have meant SUV even though she said truck.) The troopers also testified that the area they were traveling to was relatively uninhabited and primarily populated by people owning Subarus (rather than trucks).

At the close of the hearing, Judge Blankenship denied the suppression motion. The judge concluded that the troopers had responded "immediately" to a "serious" incident — an alleged domestic violence situation with an intoxicated individual trying to break into a house with an axe. The judge also found that the troopers had a "strong" suspicion to conduct the stop of Curtis's truck, given the seriousness of the report, the knowledge that Curtis was driving a truck, the truck's proximity to the cabin, and the minimal number of vehicles on the road in this remote area at that time of night. Overall, the judge concluded that the troopers "acted reasonably and prudently throughout this stop, doing exactly as the public would expect."

Following this ruling, the parties agreed to try the felony breath-test refusal charge to the judge on stipulated facts, and the judge found Curtis guilty. (As part of the

agreement, Curtis pleaded guilty to the fourth-degree assault charge and the State dismissed the remaining charges.)

This appeal followed.

The superior court did not err in denying Curtis's motion to suppress

On appeal, Curtis challenges the court's denial of his motion to suppress, arguing that the troopers did not have reasonable suspicion to stop his vehicle.

Whether an officer has reasonable suspicion to make an investigative stop is a mixed question of fact and law.[3] We view the evidence in the light most favorable to the court's ruling and overturn the court's factual findings only if they are clearly erroneous.[4] We independently assess whether those facts constitute adequate suspicion for the stop.[5]

In Alaska, the police are authorized to perform an investigative stop when they have a reasonable suspicion that imminent public danger exists or that serious harm to persons or property has recently occurred.[6] "A reasonable suspicion is one that has some factual foundation in the totality of the circumstances observed by the officer in light of the officer's knowledge."[7] Relevant factors include the extent of danger threatened by a potential crime or the seriousness of harm resulting from a crime that has already been committed, the imminence of the threat or the recentness of the crime, the strength of the officer's reasonable suspicion, the opportunity for additional investigation

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[3] *State v. Garcia*, 752 P.2d 478, 480 (Alaska App. 1988).

[4] *Id.*

[5] *Id.*

[6] *Coleman v. State*, 553 P.2d 40, 46 (Alaska 1976).

[7] *Ozhuwan v. State*, 786 P.2d 918, 921 (Alaska App. 1990).

short of a stop, the intrusiveness of the stop, and deliberately furtive actions or flight at the approach of strangers or law enforcement officers.[8] The fundamental question is whether "a prompt investigation [was] required ... as a matter of practical necessity."[9]

On appeal, Curtis argues first that the stop was not justified because he claims that there was no longer a threat to public safety once he departed from Baker's cabin. But the crime being reported here — an intoxicated domestic partner trying to break into the house with an axe — was extremely serious. Moreover, the obvious threat to public safety that Curtis posed did not dissipate simply because he left the cabin. He still could have returned to the cabin and the troopers could reasonably presume that he was now driving while angry and intoxicated on the public roads.

Curtis argues next that the stop was not justified because the stop did not occur until thirty minutes after the first 911 call, suggesting that the police did not respond immediately. But this claim is belied by the record, which shows that the police responded immediately to the 911 call and drove toward the remote cabin at speeds averaging over 100 mph. Given these circumstances, and given the remoteness of the location to which they were responding, we conclude that the police response was sufficiently immediate.[10]

Lastly, Curtis challenges the superior court's finding that the troopers had a "strong" reasonable suspicion to stop Curtis's truck. Curtis argues that the record does

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[8] *Dimascio v. Anchorage*, 813 P.2d 696, 698-99 (Alaska App. 1991); *State v. G.B.*, 769 P.2d 452, 455-56 (Alaska App. 1989).

[9] *G.B.*, 769 P.2d 455-56.

[10] *See Id.* at 456 ("[O]nce a crime has been committed, the seriousness of the resulting harm must be considered in connection with the recency of the crime. The less recent the crime, the more serious the offense must be before an investigative stop based on reasonable suspicion alone will be justified.").

not show that the officers knew the color of the truck or any other distinguishing characteristics, and he claims that their actions demonstrate that they were just pulling over every vehicle they encountered. Curtis therefore likens his case to *State v. Garcia*, in which this Court held that a drug-related stop in an airport was unconstitutional because the purportedly suspicious circumstances relied upon by the officers in justifying the stop applied to "a very large category of presumably innocent travelers."[11]

But Curtis's argument ignores the broader circumstances known to the troopers at the time of the stop: it was 2 a.m. on a Monday morning; the stop occurred in a remote and relatively uninhabited area in which most people drove Subarus, not trucks; the officers passed only three occupied vehicles on their way to the cabin (one of which was driven by Curtis); and the troopers observed that Curtis's truck contained a single, white occupant. In other words, the circumstances relied upon by the troopers to justify the stop applied only to the small number of people driving trucks in a remote area at 2 a.m. on a Monday morning. We therefore reject Curtis's attempt to analogize his case to *Garcia*.

For all of the foregoing reasons, we conclude that the superior court did not err in denying Curtis's motion to suppress.

Conclusion

We AFFIRM the judgment of the superior court.

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[11] *State v. Garcia*, 752 P.2d 478, 482 (Alaska App. 1988).